**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**
**WCC NO. H408086**

**AUTUMNIE GUEVERA,**
**EMPLOYEE** **CLAIMANT**

**ARBY'S,**
**EMPLOYER** **RESPONDENT**

**INDEMNITY INS. CO. OF NORTH AMERICA,**
**CARRIER** **RESPONDENT**

**ESIS, INC.,**
**TPA** **RESPONDENT**

**OPINION FILED JULY 29, 2026**

Hearing conducted on Tuesday, June 30, 2026, before the Arkansas Workers' Compensation Commission (the Commission), Administrative Law Judge (ALJ) Steven Porch, in Little Rock, Pulaski County, Arkansas.

The Claimant was *Pro Se*.

The Respondents were represented by Mr. Eric Newkirk, Attorney at Law, Little Rock, Arkansas.

## I. BACKGROUND

This matter comes before the Commission on a Motion to Dismiss filed by Respondents on March 31, 2026. A hearing on the motion was conducted on June 30, 2026, in Little Rock, Arkansas. Claimant was *Pro Se* and did not appear.

The Claimant worked for the Respondent/Employer as a manager. The date for Claimant's alleged injury was on October 31, 2024. This incident was reported to the Respondent/Employer on the same day. Admitted into evidence was Respondents' Exhibit 1, pleadings, correspondence, consisting of 28 pages, and Commission Ex. 1, return receipts and correspondence, consisting of 5 pages, *as discussed infra*.

The record reflects on December 16, 2024, a Form AR-1 was filed purporting that Claimant fell while coming out the freezer and landed on her right knee. On December 17, 2024, a Form AR-2 was filed accepting compensability of Claimant's injury. On March 28, 2025, a Form AR-C was filed by Claimant's then-attorney, Laura Beth York, purporting that Claimant injured her left hip, right knee, and right leg in the course and scope of her employment. On September 3, 2025, Claimant's counsel filed a motion to withdraw as counsel which was granted September 18, 2025

Respondents filed a motion to dismiss on March 31, 2026, for failure to prosecute her claim. The Claimant's was sent, on April 1, 2026, notice of the Motion to Dismiss, via certified and regular U.S. Mail, to his last known address. The certified motion notice was not claimed by Claimant, per return receipt. This notice was also sent regular U.S. Mail and did not return to the Commission. Claimant did not respond to the notice, in writing, as required. Thus, in accordance with applicable Arkansas law, the Claimant was sent notice of Respondents' Motion to Dismiss hearing date on May 5, 2026. The Claimant did not claim the certified hearing notice. However, the hearing notice sent regular First-Class Mail did not return to the Commission. The hearing took place on June 30, 2026.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole and other matters properly before the Commission, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Commission has jurisdiction over this claim.

2. The Claimant and Respondents both had reasonable notice of the June 30, 2026, hearing.

3. Respondents have proven by the preponderance of the evidence that Claimant has failed to prosecute her claim under 11 C.A.R. §25-110(d) (formerly AWCC Rule 099.13).

4. The Respondents' Motion to Dismiss should be granted.

5. This claim is hereby dismissed without prejudice.

## III. DISCUSSION

11 C.A.R. §25-110(d) provides:

> Upon meritorious application to the Commission from either party in an action pending before the Commission, requesting that the claim be dismissed for want of prosecution, the Commission may, upon reasonable notice to all parties, enter an order dismissing the claim for want of prosecution.

*See generally Johnson v. Triple T Foods*, 55 Ark. App. 83, 85, 929 S.W.2d 730 (1996).

Consistent with 11 C.A.R. §25-110(d), the Commission scheduled and conducted a hearing, with reasonable notice, on the Respondents' Motion to Dismiss. Claimant did not claim the certified hearing date notice. However, the hearing date notice sent regular First-Class mail did not return to the Commission. Thus, I find by the preponderance of the evidence that the Claimant did receive reasonable notice of this motion to dismiss hearing date.

Furthermore, 11 C.A.R. §25-110(d) allows the Commission, upon meritorious application, to dismiss an action pending before it due to a want of prosecution. Claimant has failed to request a bona fide hearing since the filing of her Form AR-C. Therefore, I do find by the preponderance of the evidence that Claimant has failed to prosecute her claim. Thus, Respondents' Motion to Dismiss should be granted.

## CONCLUSION

Based on the Findings of Fact and Conclusions of Law set forth above, Respondents' Motion to Dismiss is hereby granted, and Claimant's claim is dismissed *without prejudice*.

**IT IS SO ORDERED.**

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STEVEN PORCH
Administrative Law Judge